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[*Howe v. Afftrex, Ltd.*](#), 94-ERA-8 (Sec'y Dec. 12, 1994)

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DATE: December 12, 1994
CASE NO. 94-ERA-8

IN THE MATTER OF

DAVID C. HOWE,

COMPLAINANT,

v.

AFFTREX, LTD.

and

MARTIN MARIETTA ENERGY
SYSTEMS,

RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER OF DISMISSAL

This case is before me for review of the Recommended Order of Dismissal, dated September 20, 1994, issued by the Administrative Law Judge (ALJ) under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988). On August 22, 1994, Complainant filed a written request to withdraw this ERA complaint. Complainant indicates that he intends to "seek a different [sic] case against Afftrex LTD only at a later date." Respondent Afftrex, LTD. responds that it will not resist a dismissal of the complaint. Respondent Martin Marietta Energy Systems (Martin Marietta) responds that it has no objection to voluntary dismissal without prejudice but requests the ALJ to note, as a condition pursuant to Fed. R. Civ. P. 41(a)(2), that a

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grant of Complainant's motion effectively precludes any future legal remedy against it under the ERA. In my view, however, the parties' statements amount to a stipulation of dismissal without prejudice as provided in Rule 41(a)(1)(ii). See *Blevins v. Tennessee Valley Authority*, Case No. 90-ERA-4,

Sec. Order, June 28, 1993, slip op. at 3; *Millet v. Anco Insulations, Inc.*, Case No. 88-ERA-35, Sec. Order, Sept. 29, 1989. [1]

Accordingly, the complaint in this case is DISMISSED without prejudice.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] I note that the "condition" requested by Martin Marietta occurs by operation of law when a case is dismissed without prejudice. A dismissal without prejudice does not toll a statute of limitations -- expiration of the limitations period will bar a complainant from filing another ERA complaint based on the same facts. See *Stites v. Houston Lighting & Power Co.*, Case No. 87-ERA-41, Sec. Order, Sept. 29, 1989, slip op. at 3; *Nolder v. Raymond Kaiser Engineers, Inc.*, Case No. 84-ERA-5, Sec. Order, June 28, 1985, slip op. at 12 n.11.